

Abstract

Topical issues of the regulation of international air carriage

The main purpose of this work is to provide its readers with an overview of the many facets of passenger rights in such dynamic area as international air carriage. Development in this area has given rise to issues and challenges, including the overlapping of legal and geographical scopes of different air passenger protection instruments. Over the last decades, several air passenger protection regimes have developed across the world, in particular on international, European Union and national level. But does the patchwork work?

The history of multilateral regulation in the field of international air transport with regard to air passenger rights could be said to have begun in 1929 when the Warsaw Convention was originally signed. The importance of the convention lies in unification of the rules concerning the documents of carriage and the liability of air carriers. In 1955 the Warsaw Convention was amended by the Hague Protocol, which substantially redrafted, modernized and simplified rules relating to the documents of carriage as well as doubled the limit of carrier liability with respect to persons. The Warsaw Convention's application was subsequently extended to the carriers actually performing the transport by air when a passenger contracted with a charterer by Guadalajara Convention in 1961. Some other changes to the Warsaw Convention were lately proposed and prospectively ratified. All the amending protocols, supplementary instruments and rules are collectively with the original convention called the Warsaw System.

The Montreal Convention of 1999, which entered into force on 4 November 2003, modernizes and consolidates all Warsaw System instruments, and prevails over all Warsaw System instruments, as between two States both Parties to the Convention. As between two States not both Parties to the Convention, the relevant Warsaw System instruments will remain in effect, if such States are both Parties thereto. Within the EU, specific regulations to protect air passengers have accompanied the international set of rules. From the beginning of the 1990s, the adoption of Regulation (EEC) No 295/91 on denied boarding, replaced by Regulation (EC) No 261/2004, as well as Regulation (EC) 2027/97 (as amended by Regulation (EC) No 889/2002)

aligning its provisions with those in Montreal Convention and thus creating a uniform system of liability, all considerably contributed to greater protection of the air passenger rights. However, the relationship especially between Regulation (EC) No 261/2004, and the Montreal Convention has not since the very beginning lead to clear and unequivocal answer. Identifying and establishing the borders between the areas covered by those two instruments have therefore fell within the scope of CJEU interpretation.